

May 24, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: MD Docket No. 95-3

Dear Mr. Caton:

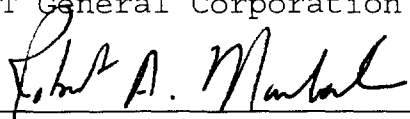
On March 30, 1995, a group of satellite carriers and staff members of the Federal Communications Commission met at the offices of Booz-Allen & Hamilton, Inc. in Mclean, Virginia. The purpose of the meeting was to discuss issues arising out of the Commission's Notice of Proposed Rulemaking in the above-referenced proceeding.

At that time, the satellite carriers were advised by the Booz-Allen facilitators that a transcript of the proceeding would be made available to the participants and be part of the record in MD Docket No. 95-3. COMSAT General Corporation herein submits a copy of the transcript, as furnished by Booz-Allen, and formally requests that the transcript be considered as part of the record in this proceeding.

Respectfully submitted,

COMSAT General Corporation

By:


Robert A. Mansbach
Its Attorney
(301) 214-3459

Enclosure

No. of Copies rec'd 025
List A B C D E

**Satellite Carriers
Regulatory Fee Focus Group
March 30 at 9:00 a.m.**

1. The meeting was held at Booz•Allen & Hamilton, Inc., 8251 Greensboro Drive, McLean, VA 22102. The list of attendees is at enclosure 1.

2. **Introduction.** Booz•Allen facilitators opened the meeting by welcoming everyone and thanking them for their participation. They then explained that the group was convened to determine if there are alternative methodologies to those currently proposed for partitioning regulatory fees among space station and earth station payees. Facilitators emphasized that the magnitude of the fee assessed for each fee category is not the discussion topic. Rather, the issue is how regulatory fees are distributed among the different payees within a category.

Industry representatives made several introductory comments. They questioned the need for the focus group since they had already commented to the Commission on the Notice Of Proposed Rulemaking. Representatives expressed concern that they were now just revisiting their previous comments. One representative suggested that the FCC intended to "co-op" them by holding the focus group. In other words, the FCC might now say that industry participated in determining their own fees.

The FCC provided background information on the legal aspects of regulatory fees. The Communications Act requires the Commission to collect regulatory fees for enforcement, policy and rulemaking, international, and public information activities as they apply to all of the bureaus. The fees for the Commission as a whole are \$116 million for FY95, up from \$60 million last year. Overall, FCC customers can expect a 93% increase in fees in FY95. This \$116 million is divided into major fee categories — common carrier, mass media, private radio, and cable— by estimating the number of full-time equivalents (FTEs) involved in regulatory activities for that category and dividing the \$116 million accordingly. The amount assigned to a major category is further subdivided within each major fee category on a pro rata basis and then divided by the units of payment.

3. Industry Representatives' Questions And Concerns.

Participants had a number of questions they wanted answered prior to beginning the discussion on methodology. The following paragraphs describe these questions and FCC answers:

A. Industry representatives inquired as to why satellites were put in the common carrier category rather than an "international category." FCC replied that the Commission used the categories defined by Congress. The fees for the common carrier categories were based upon the number of FTEs involved in

regulatory activities. FTEs within the Compliance and Information Bureau and the International Bureau also contributed to the calculation. The FCC noted that the recent reorganization at the Commission has contributed to the confusion. The FCC also reiterated the intent to focus on methodology at this meeting, and stated that a more detailed explanation on the distribution of the FTEs will be in the Report And Order. The FCC stressed that the organizational grouping is for communication purposes only — the fee schedule is an activity schedule, not an organizational schedule.

B. Industry representatives commented on the methodology used to partition fees for receive-only earth stations. The FY95 proposal for these stations is a fee based on per antenna meter rather than the per dish charge used in FY94. Receive-only stations have already paid \$265 to cover registration costs for 10 years. Receive-only stations do not require much regulatory activity — most are not licensed, only registered. Industry representatives believe that are paying more in fees than what they are getting in return in terms of regulatory activity. FCC replied that, at this time, specific regulatory activities at the individual fee level have nothing to do with how FTEs are used to determine revenues to be collected.

C. Industry representatives asked what they were getting for paying \$3.5 million in earth station fees. They suggested that the FCC has no international activities and very little enforcement and regulatory activities in terms of these stations. The FCC stated that they do not have the capability to divide FTEs in terms of time spent on individual category activities. At this time, the FCC can only estimate the number of FTEs involved in the major service categories. The FCC also reminded the group that Congress put satellite carriers in the Common Carrier category. The FCC can change the distribution of the fees within the category, but not the assignment.

D. One industry representative inquired if the fees paid to Booz•Allen to conduct the current focus group would be recovered through regulatory fees. The FCC replied that, yes, these fees, or a portion of these fees, would likely be recovered through regulatory fees. The industry representative stated that this was outrageous.

E. An industry representative inquired if any document exists that describes how the FTEs are divided to establish the regulatory fees. The FCC explained that the FTE methodology was provided in the FY95 Notice of Proposed Rulemaking, and will be covered in more detail in the Report And Order.

F. An industry representative commented that it was important for them to know the details for the FTE formula in order to appropriately "noodle" it.

G. Another participant commented that, by not allowing industry to participate in the first level of the FTE calculation, the FCC is removing a specific area which could benefit from customer input. This participant did not understand how the amount for each fee category was derived. This participant

stated, "Hopefully, I am speaking for many people, when I say that it is atrocious that it (the total fee amount) is not up for discussion." The FCC cannot tell industry, at this time, how many FTEs are associated with each individual activity because they do not yet have a cost-accounting system.

H. One participant asked, If the Common Carrier Bureau had to hire 300 more people, how would the FTEs impact satellite carrier fees. The FCC answered that these FTEs would be added to the particular regulatory activity, in this case, the common carrier activity. The fees of everyone in the common carrier fee category would increase proportionately due to the hiring of new staff.

I. Another participant noted that industry already pays a fee for the processing of applications, and wondered whether they were paying twice with FTEs for that application process. The FCC stated that industry is not paying for application costs in the regulatory fee.

J. One participant wondered where benefit to the payer fits into the situation. They wondered if FCC maintains that magnitude of regulatory fees are related to the value received by the payer. The FCC responded that the fees are distributed so that they are reasonable to the payer and in the public interest. The FCC noted that the mandatory adjustments have been discussed already in the session and the purpose now is to discuss the permitted adjustments.

K. Another participant noted that the figures set forth for each of the services are completely arbitrary and capricious. There are some discrepancies between the text and the numbers. The FCC again explained that the Congress determined fee categories and emphasized that approximately 40% of the FTEs are overhead. The Compliance and Information Bureau is included in the regulatory fee program. They are a large bureau with a lot of FTEs. Their handling of complaints, public information and enforcement is included. In addition, some Office of the Managing Director and Office of Engineering Technology FTEs are included. All of those FTEs have been allocated on a pro-rated basis across the fee categories. Also, one can add approximately 40% to the average cost per person for the recovery of office space costs, equipment, contracts, etc. — again pro-rated across fee categories.

4. Discussion Of The Partitioning Of Regulatory Fees Within Fee Categories.

Facilitators then focused the discussion on possible ways to alter the methodology for partitioning fees within the space station and the earth station categories.

A. Space Station Issues.

(1) Industry representatives felt that problems existed with the accuracy of the licensee counts. The space station category now divides the fee among approximately 35 payees. The FCC noted that currently the Commission is verifying the numbers. Participants responded that it would improve the situation if the FCC retained documentation of the number of payees, thus increasing the accuracy of the numbers.

(2) An industry representative asked how the FCC factored in the big and little LEOs to the count of payees. The FCC pointed out that they were not included in the FY95 schedule because these satellites were not launched by the cut-off date for payee count. There are two little LEO launches next month and little LEOs will be included as payees in FY96. The FCC stressed that, whatever the number, those payees will contribute. The FCC also noted that the fee structure leaves off those entities that are not yet in operation.

(3) Several participants noted that the regulatory activities that take up the largest amount of FCC time involve industries that are not operational. Furthermore, this issue involves all fee categories not just space stations. For example, the work the FCC expended on pioneers preference alone involved a large amount of resources for which industry has to pay. Additionally, domestic satellites (DOMSATs) are essentially deregulated. Industry expects to be paying regulatory fees of \$142,500 per satellite. Furthermore, the Commission has a proceeding in 28 ghz to reallocate that band. It involves a negotiated rulemaking procedure that is resource intensive and will take away resources from the satellite industry. Industry is paying for this as well. One participant stated that, "The FCC is selling industry the rope they are going to hang industry with." This is because the current resource intensive activities occupying the Commission's time will, for the most part, supersede satellite carriers.

(4) An industry representative inquired if the FCC reference room costs were included in the assessment of regulatory fees for satellite stations. FCC declined to provide a line-by-line itemization of what industry is paying for, as that was not the focus group subject. Rather, industry should focus on the partitioning methodology issue.

(5) One participant noted that the Commission should include COMSAT as a payee because COMSAT requires a large amount of the regulatory resources expended by FCC. Other industry representatives agreed. Another representative felt that this issue had already been discussed. This representative stated that Congress exempted COMSAT from paying the

regulatory fees because they pay the Commission by means of other things. Furthermore, since industry does not know how much money the FCC really spends on COMSAT regulatory activities, the magnitude of a reasonable fee is unclear. This participant again stressed that the regulatory fees should reflect actual time spent regulating the industry.

(6) Again, a participant commented that the FCC has not accurately counted the number of satellites. Since industry reports twice a year about the number of satellites they have in orbit, it should be just a counting process. DBS is included the December count. The FSS, not DBS, is included in the October count.

(7) One participant suggested that when the FCC issues a Report And Order, they attach the numbers of satellites. This should include a specific list of the satellites that are being charged fees. Then it would be easy to identify if a satellite is not in operation, or if a satellite has been left off of the list.

(8) The FCC reemphasized that the customer counts in the FY95 Notice Of Proposed Rulemaking did not include DBS. There were two DBS services, and until October 1, they were in the Mass Media Bureau. After the reorganization, they were moved to the Common Carrier Bureau.

(9) Participants noted that satellites that are not yet operational require a large amount of regulatory resources. An example is the LEOs. A large portion of the Commission's resources are required for the debates, legal fees, technical oversight, proceedings, appeals, etc. This all takes place before the satellite is up, operational, and on the list as a fee payee. Participants argued that it is unfair for the operational satellites to pay for the not yet operational ones. They suggested a payback might be used with these satellites paying larger fees when they actually become operational.

(10) Another participant commented that the FCC spends years deciding whether to allocate a given spectrum and how to go about licensing that service. The time spent by the FCC's Office of Engineering Technology, Office of General Counsel, all of the bureaus, and the commissioner offices should be taken into account here. If all of these factors are not factored into the fee, it is unfair.

(11) One representative suggested that it may be difficult to collect money from pre-licensees. If the Commission cannot subject non-licensees to fees, then the FCC should find another way. This is paying for the time of government employees - you have to carve out those FTEs from the rest of industry. This might entail an activity in advance of the licenses. The FCC stated that this process would require collecting funds for benefits conferred before licensing, when no benefit has been received by the unlicensed industry. When industry does not have a service in place, it is hard to justify taking money from the business. They are already spending a lot of money to obtain the licenses. The FCC does want to encourage new technology. Industry responded that this is a zero-sum game. It appears that the FCC singles out a

small segment of society to pay for benefits to all of society. As much as the group does not like the whole process, every time one industry pays a dollar less, someone else pays a dollar more.

(12) Industry representatives asked if the law requires the FCC to determine the amount to be collected based on the expenditure of the bureaus. The FCC pointed out that the budget is based on enforcement, international, public information, and policy and rule making activities. Congress also picked the overall number for the FCC. The FCC continued that there is no question that the schedule does subsidize new ventures in terms of policy and rulemaking. The schedule also subsidizes other areas. Congress is telling the Commission to collect all of the costs, and Congress has excluded noncommercial, amateur, and public safety licensees.

(13) A participant pointed out that as long as the FCC was going to have the fees structure, there are a number of areas where there are fatal flaws. FCC decisions are not subject to judicial review. There are also certain entities that benefit more than others such as unlicensed and licensed, but not launched entities.

(14) Again, industry representatives stressed that too much of the cost was being given to the existing industries. Current costs to industry include legal time, filing activities, on-going maintenance, etc. It seemed to some that more rulemaking has to be done. They questioned if the Commission had considered a special category of licensees, like new services, which attributes the costs that accompany the creation of that service to the licensee with a phase-in fee structure. Companies such as American Mobile Satellite Corporation have clearly benefited and should pay more than those that have not benefited.

(15) Industry representatives would appreciate the institution of a cost accounting system for the FCC to more accurately calculate regulatory fees. Representatives suggested that the FCC re-investigate their categories with the intent of defining the current market in a more clear and equitable fashion. While this may not affect the immediate situation, it would cause some concerns to be alleviated.

(16) Industry representatives questioned the domestic satellite fees. Specifically, they questioned how the FCC justified a domestic fee of \$142,500. They wondered if that fee included user information services, enforcement costs, etc. They recommended that the Commission examine the details on international enforcement fees. One participant stated that the proper fee for domestic satellites is about \$11,000. The FCC noted that Congress established a fee of \$62,000 for satellites last year.

(17) Industry representatives expressed concern over a "double jeopardy" situation. Industry paid application fees for construction, launch, and operation and were informed that those fees paid for those processing activities.

There were concerned that the regulatory fees were paying for the same activities.

5. Receive-Only Earth Station Issues

A. Participants complained about the proposed change in methodology for receive-only earth stations. In FY94, these stations were charged a per station fee. Stations with antennas of 9 meters or more were charged a higher fee than stations with antennas of less than 9 meters. The FCC proposed, in FY95, to change the procedure and charge fees on a per antenna meter basis. This change will increase the per station fees by 10,000%.

B. Participants noted that these stations already pay a \$265 filing fee, which is good for ten years and covers the cost of filing. The FCC spends no other time on these stations. There is no FCC activity in terms of enforcement, international activities, or user information issues. Participants stressed that this is an important consideration since the statute requires some relationship between fees and benefit to the payer.

C. Participants noted that Congress adopted the first fee schedule and created a tremendous disparity between the receive-only earth stations and the other earth stations. They maintained that the FCC change from a per dish to per meter fee is way out-of-line. The FCC needs to maintain the disparity between receive-only stations and the other stations to some degree; whether the fee is assessed per meter or not, the disparity between the types of stations should be maintained.

D. Participants stressed that the amount of regulatory activity involved with receive-only earth stations is minimal. These dishes may be registered on a voluntary basis; it is not a licensing process. Whoever wishes to use small receive-only stations can obtain registration from the FCC, if they want it. They suggested that the FCC should give receive-only earth stations the opportunity to bypass the FCC totally and opt out of paying the FY95 regulatory fees.

E. Participants noted that the fees for receive-only earth stations went from \$.06 a dish to \$120 per meter and the average antenna size is 5 to 10 meters. This is a huge increase. There needs to be a fee distinction between the receive-only and the transmit and receive (T&R) stations. Currently, they are lumped together. The distinction between the two was removed because the FCC felt there was no difference between an 8 meter and a 9 meter station in terms of regulatory activities. The participants did not agree with this change.

F. Participants delved further into the receive-only versus T&R stations comparison. Congress made a ruling on dishes with a diameter 9 meters and over, and those below 9 meters. Participants suggested that this disparity was deliberately planned, since thousands of cable systems had to have a smaller dish to exist. Participants suggested that, since Congress knew that a large number of cable systems had to have receive-only antennas, they deliberately set a low fee.

G. Participants stated that there is a difference between the regulatory activities required for a receive-only and transmit-receive only station. The group felt that the FCC should consider reestablishing the fee differentiation between the transmit and receive and receive-only categories. One problem is that the Commission has not broken out the cost amounts of the regulation and enforcement, both domestic and international, for industry. This might assist in determining fair fees.

H. The Commission felt it did not have to defend the fees on a service-by-service basis.

I. Industry believed that the number of pay units for transmit and receive-only on the NPRM was not accurate. The FCC agreed and indicated that the payment units are being recalculated.

J. One participant again suggested fully privatizing the registration process. All of the work is being done privately by frequency coordinators, and maybe the FCC should be left completely out of the process.

K. One participant asked whether a decrease in the fee for receive-only earth stations would impact the fees paid by other common carrier service categories. The FCC replied that it would, and the increase would be spread across all of the other common carrier activities. The Report And Order would adopt these changes, if undertaken.

6. Additional Space Station Issues

A. The group discussed basing satellite fees on the size of the satellite. Other categories might include little satellites, C band and KU band capacity satellites. These categories would reflect the greater benefit conferred than the current categories.

B. Participants noted that there will be increasing numbers of small satellites in the future. Ideally, smaller satellites require fewer transponders and, thus, have fewer regulatory issues. Therefore, carriers should be assessed lower fees for small satellites. These satellites will be half the size of the usual satellite. Larger satellites with more transponders are more likely to cause interference and, therefore, should be assessed higher fees. The Commission stated that it will have to obtain more information to make that determination.

C. The group discussed the FCC's internal allocation of FTEs. FCC pointed out that Commission bureaus and offices have broken out all of their FTEs. Application processing FTEs are not included in this, so this is not double counting. For example, if you are in the AM branch and work on applications, you should not show up as an FTE in the regulatory fee program. The FCC looks at how many FTEs are doing authorization and regulatory services (includes policy and rule making, enforcement, international, and all public information services). The group remained concerned that Commission employees do not report the type of regulatory activities on which they spend their time. There will be a Congressional review of the fee schedule, and it will go into effect in 90 days, thereafter.

D. Participants raised the issue of satellites taken out of orbit during the course of the year, and whether they should pay for a full year. Under current guidelines, a carrier could launch the satellite on Sept. 25, but be assessed fees for the full year. Participants generally felt this policy was a problem.

E. One participant, appearing to speak for many in the group, stated that this focus group was in their best interest. This participant noted that industry representatives do not understand the fee issues and that they are now trying to figure everything out. This participant also stated that people in the group understand that this focus group is a process of having a dialogue between the Commission and industry, and that it is important at this phase for the FCC to win some degree of confidence from industry. The participant stressed that the group, in general, expressed a need to understand how the Commission established the numbers. Many felt they still do not have enough information on the process. Furthermore, if the FCC had explained the procedure to industry before, then industry did not understand the FCC. Finally, the participant noted that industry was beginning to lose confidence in the system; that this focus group process was a good one and important to industry. The participant reiterated that industry still does not have sufficient information on what costs make up the fees.

F. One participant stressed that the Commission needs to identify the benefits to particular licensees. FCC needs to define the benefits as related to specific categories (e.g., receive-only and transmit & receive stations).

G. Industry representatives stressed the need for more fee detail. The FCC plans to respond to all questions in the Report And Order.

H. One participant stressed that industry will be more antagonistic with the increase in fees. Industry does not get anything additional for these fees and, as a consequence, they will scrutinize the FCC more. Now that the FCC is taking money out of industries' pocket, they will want the FCC to answer more of the questions being asked. The FCC needs to communicate with industry - when industry is paying for something that they once got for free, they want to get a sense of value for their money. If the FCC can only provide vague and ambiguous answers, industry will challenge the Commission. Industry needs to get the facts right, and they need the facts. Ultimately, this will make the FCC more honest and responsive to the public.

**Satellite Carriers Regulatory Fee
Focus Group Attendees**

Name	Organization	Phone Number
James Mullins	FCC	202-418-1720
Peter Herrick	FCC	202-418-0443
Kathleen Campbell	FCC	202-739-0729
Jackie Ponti	FCC	202-739-0453
Gregg Daffner	PanAmSat	203-622-6664
Beverly Sincavage	Leslie Taylor Assoc.	301-229-9341
Jim McCullough	AT&T	908-221-6957
Kevin Kelly	Loral-Qualcomm, Inc.	202-223-1720
Alex Humphrey	GE American Comm., Inc.	703-848-1216
Julian Sheppard	Verner, Liipfert, Bernhard, McPherson & Hand	202-371-6111
Orion representative	Orion Network Systems, Inc.	202-371-6060
Neal Goldberg	Natl Cable TV Assoc.	202-775-3664
Bob Unger	Cable Telecomm. Assoc.	703-691-8875
David Keir	Columbia Comm. Corp.	202-429-8970
Bob Mansbach	COMSAT Corp.	301-214-3459
Robert Briskman	Satellite CD Radio	202-296-6192
Paul Sinderbrand	Wireless Cable Assoc	202-835-8292